THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.No. 13624 of 2006

Dated: 17.07.2006

Between
Parnandi Satish ..Petitioner

and

The State of A.P. rep. by its Secretary, Home Department, Secretariat, Hyderabad and two Others ..Respondents

JUDGMENT : (per JC,J)

Writ Petition is filed with the prayer as follows :

> "For the reasons stated and in the circumstances stated in the accompanying affidavit, the petitioner herein prays in the interests of justice, that this Hon'ble Court may be pleased to issue a direction or an order particularly in the nature of Habeas Corpus directing the respondents, to produce Mrs.Bharghavi, aged Major, now in Correction Home at Malakpet, Hyderabad before this Hon'ble Court and to deliver the custody to the petitioner, and pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

The petitioner, a young man aged about 24 years asserts that he married to one Bharghavi, daughter of the 3rd respondent herein on 7.6.2006. The petitioner further asserts that the said Bharghavi is a Major.

On 5.6.2006, the 3rd respondent reported to the

2nd respondent that his daughter Bharghavi was missing from his residence from the intervening night of 3/4th June, 2006. According to the report of the 3rd respondent, the above mentioned Bharghavi was born on 23.9.1988. Further, the 3rd respondent complained that the petitioner herein took away his daughter inducing her to believe that he would marry her and therefore requested action to be taken against the petitioner. On the basis of the above report, the 2nd respondent registered a crime in Cr.No. 50 of 2006 under Section 366(A) IPC. Admittedly, while the investigation into the above mentioned crime is in progress, on 16.6.2006, the petitioner along with the above mentioned Bharghavi approached the 2nd respondent and surrendered before him. Even according to the affidavit filed by the 2nd respondent, the marriage between the petitioner and the above mentioned Bharghavi was performed in Hanuman Temple, near Kanakadurga Temple at Vijayawada. The 2nd respondent after recording their statements produced both of them before the Judicial Magistrate of First Class at Jangaon on the same day with an application to pass appropriate orders regarding the custody of Bharghavi. The learned Magistrate passed an order directing that the above mentioned Bharghavi be lodged at the Rescue Home at Hyderabad. The petitioner was remanded to judicial custody who subsequently obtained bail and filed the present writ petition.

On 13.7.2006, when the matter appeared before us, we directed the 2nd respondent to produce the alleged detenue Bharghavi and accordingly she was produced

before us today. The petitioner and the parents of Bharghavi are also present today. Each one of them was examined by us in the chambers of one of us at 2.15 PM. The alleged detenue Bharghavi categorically stated that she was not kidnapped by the petitioner, but she volunteered to go off with the petitioner as she is in love with the petitioner. She also asserted that they got married as alleged by the petitioner in the writ petition. She declined to go back to her parents. Even according to the counter filed by the 2nd respondent, when Bharghavi was produced before the Magistrate, she declined to go to their parents and therefore the order directing her to be kept in the Rescue Home came to be passed. We are anguished with the casual manner in which the order delivering the alleged detenue Bharghavi to the Rescue Home passed by the learned Magistrate. When the matter was taken up on 13.6.2006, we requested the learned Advocate General to examine the legal position as to how such an order could be passed in the case of the alleged detenue and the authority of law which justifies such an order.

We are informed today by the learned Advocate General that the Rescue Home to which the alleged detenue was sent to is a Home established under section 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000 which reads as follows :

> **"34. Children's homes :- (1)** The State Government may establish and maintain either by itself or in association with the voluntary organizations, children's homes, in every district or group of districts, as the case may be, for the receipt of child in need of care and protection during the

pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation.

(2) The State Government may, by rules made under this Act, provide for the management of children's homes including the standards and the nature of services to be provided by them, and the circumstances under which, and the manner in which, the certification of a children's home or recognition to a voluntary organization may be granted or withdrawn."

It can be seen from the section that the State Government is authorized to establish by itself or in association with the voluntary organizations, children's homes for the receipt of `children in need of care and protection during the pendency of an enquiry and subsequently for their care, treatment, education, training, development and rehabilitation. Its obvious from the section that only a child in need of care and protection can be sent to such a Home established under Section 34. The expression `child in need of care and protection' is a defined expression under Section 2(d) of the Act which reads as follows :

"**2. Definitions :-** In this Act, unless the context otherwise requires,-

(d) `child in need of care and protection' means a child,-

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ii) who resides with a person (whether a guardian of the child or not) and such person - (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or (b) has killed, abused or neglected

some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict, civil commotion or natural calamity;

The alleged detenue Bharghavi in our view does not fall in any one of the nine categories occurring in the definition `child in need of care and protection'. Clearly categories 2 to 9 are not applicable. The only possibility if at all is if Bharghavi falls in the category No.1 i.e., the child who is found without any home or settled place or abode and without any ostensible means of subsistence. Before a

person could be brought under this category, first of all, the person must be a child. The expression `child' is defined under Section 2(k) `to be a person who has not completed eighteenth year of age'. No enquiry whatsoever in this regard to ascertain the age of the alleged detneue Bharghavi is made before passing an order entrusting the custody of Bharghavi to the Rescue Home. Assuming for the sake of argument that Bharghavi is a child as defined under the Act, a further enquiry whether she has no home or settled place or abode is also not ascertained. On the other hand she is a married woman and it is not the case where either the husband or inlaws declined to take her with them. Apart from that, under the scheme of the above mentioned Act, if a person satisfies the requirement of the definition of a `child in need of care and protection' such a person is required to be produced before a committee constituted under Section 29 of the Act and its only such a committee which can take a decision as to the custody of the child in need of care and protection. The Magistrate exercising the powers of the provisions under the Criminal Procedure Code, in our view, is not empowered to pass any order such as the one passed in the present case. At any rate, no specific provision is brought to our notice which authorizes the Magistrate to pass such an order.

In the circumstances, we are of the opinion that the order of the learned Magistrate dated 16.6.2006 directing that the alleged detenue Bharghavi to be sent to the Rescue Home, in our view, is wholly illegal and without any jurisdiction and is liable to be declared as such. The writ petition is therefore allowed as prayed for leaving it open to the alleged detenue Bharghavi to join either the petitioner or her parents.

J.CHELAMESWAR,J

Knk

Dt : 17.07.2006

D.APPA RAO,J